

Coleman Northeast

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

FINAL

IN THE MATTER OF:

COLEMAN NORTHEAST
PLANT -
WICHITA KANSAS

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CONSENT ORDER
FOR REMEDIAL INVESTIGATION

Case No. 91-E-205

PRELIMINARY STATEMENT

The parties hereto, the Kansas Department of Health and Environment (KDHE), and The Coleman Company, Inc. (hereinafter "Coleman"), having agreed that settlement of this matter is in the best interests of all parties and the public, hereby represent and state as follows:

1. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature.
2. KDHE has general jurisdiction of matters involving hazardous substance and hazardous substance cleanups under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a. et seq.), as well as hazardous waste and its clean-up (K.S.A. 65-3430 et seq.) and has general authority and responsibility to protect the waters and soils of the state under the authority of K.S.A. 65-161, et seq.
3. Coleman has voluntarily expended substantial time, money and effort in evaluating environmental conditions on, under and near to its property.
4. Coleman agrees to undertake all actions required by the

terms and conditions of this Consent Order. In any action by KDHE to enforce the terms of this Consent Order, Coleman agrees not to contest the authority or jurisdiction of the Secretary of Health and Environment to issue this Consent Order.

5. This Consent Order shall apply to and be binding upon KDHE and Coleman, its agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of Coleman shall alter its responsibilities under this Consent Order.

6. Coleman shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. Coleman shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within 14 days after the effective date of this Consent Order or the date of retaining their services. Notwithstanding the terms of any contract, Coleman is responsible for compliance with this Consent Order and for ensuring that its contractors and agents comply with this Consent Order.

7. The activities conducted under this Consent Order are subject to approval by KDHE and shall be undertaken in a manner that is consistent with the National Contingency Plan (NCP), 40 CFR Part 300.

8. While Coleman specifically denies and does not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact and conclusions of law made by KDHE in this

Consent Order, and specifically reserves the right to contest any such determinations, allegations, findings, and conclusions in any proceeding regarding the Coleman Property other than actions brought by KDHE to enforce this Consent Order, nevertheless it agrees to enter into this Consent Order to perform the Work as described in the attached Work Plan. Coleman specifically reserves any and all rights (including any right to contribution), defenses, claims, demands, and causes of action which it may have with respect to any other person not a signatory to this Consent Order.

FINDINGS OF FACT

9. The Coleman Northeast Plant is located in the northwest quarter of Section 34, Township 26 South, Range 1 East in Sedgwick County. The plant and adjoining property occupy approximately 160 acres. The plant is the main factory for Coleman Outdoor Products, Inc., and was constructed in 1971.

10. Products manufactured at the plant include recreational equipment such as cook stoves, lanterns, coolers, and thermal beverage containers.

11. Pursuant to Coleman investigations, it has been reported that the groundwater underlying the Property contains volatile organic compounds ("VOC's") including, but not limited to Trichlorethylene, and its degradation products (collectively referred to as "TCE".)

12. Conclusions from the January 22, 1991 report indicate

that primarily chlorinated VOCs have impacted the soils and groundwater at the Coleman Northeast Plant. In addition, the report indicates that the available data does not define the extent or degree of contaminated soil or groundwater and that further investigation is needed.

CONCLUSIONS OF LAW

13. Coleman is a "person" within the meaning of K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq., and K.S.A. 65-3452a, et seq.

14. The presence of the contaminants identified in the groundwater underlying the site constitutes "pollution" as defined by K.S.A. 65-171d.

15. Some of the contaminants identified in the groundwater underlying the site, are "hazardous substances" as defined by K.S.A. 65-3453 and "hazardous wastes" as defined by K.S.A. 65-3430.

16. The area defined in paragraph 9 and identified as Coleman Northeast Plant constitutes a "site" within the meaning of K.S.A. 65-3453.

17. The facts above constitute:

- a) the discharge, abandonment, or disposal of hazardous substances or hazardous wastes;
- b) the pollution of the land or waters of the state or the threat of pollution of the land or waters of the state;
- c) a hazard to persons, property or public health or threatens to become a hazard to persons, property or public health.

18. Under the facts as shown above, the Kansas Department of Health and Environment has concluded, and the Secretary has confirmed, that there is a need for a response action to prevent a continuing release or threat or release of hazardous substances and remove the pollution or hazard.

19. The clean up of such discharges is necessary to remove the pollution or hazard and to protect the public health and safety and the environment, giving rise to the authority of the Kansas Department of Health and Environment to enter this agreement. A necessary part of this clean up is an investigation of the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants on or from the site.

20. The Kansas Department of Health and Environment has authority to enter the agreement herein, and to make the findings of fact and conclusions of law herein stated.

21. The Secretary of Health and Environment is authorized by K.S.A. 65-3453, K.S.A. 65-164, et seq., K.S.A. 65-3430, et seq. and the regulations issued pursuant thereto to enter an order confirming the agreement of the parties, and ordering that the actions and obligations required by the foregoing findings of fact and conclusions of law. The parties hereto agree to the following activities and commitments.

ORDER

22. Coleman has submitted a revised Work Plan to KDHE for approval. This revised Work Plan is approved, attached hereto and incorporated herein as Attachment 1. Coleman agrees that all data submitted to and approved by KDHE pursuant to this Consent Order may be released by KDHE to the Wichita North Industrial District Group (WNID Group).

23. Within 30 days of the effective date of this Order, Coleman shall commence the schedule of work and thereafter implement the tasks detailed in the Work Plan. The work shall be conducted in accordance with the standards and specifications contained in the Work Plan, and in a manner consistent with the NCP.

24. Coleman shall provide preliminary and final reports to KDHE according to the schedule contained in the Work Plan.

25. After KDHE reviews the preliminary reports and after KDHE reviews the final reports, KDHE shall notify Coleman in writing of KDHE's approval or disapproval of these reports or any part thereof. KDHE shall also notify Coleman in writing of KDHE's approval or disapproval of Coleman's implementation of the approved Work Plan. KDHE agrees to use its best efforts to respond by either approving or disapproving the implementation of the Work Plan within thirty (30) days after submission of a certificate of completion to KDHE. In the event that such is not possible, KDHE agrees to notify Coleman of delays beyond thirty (30) days.

26. In the event of any KDHE disapproval of a submitted

report or disapproval of Coleman's implementation of the approved Work Plan, KDHE shall send Coleman a Notice of Disapproval delineating the deficiencies, recommending revisions to the reports or the modified work required to cure the deficiencies in the work and setting a schedule for response by Coleman, provided however, that any such recommendations are consistent with the Work contemplated in the Work Plan.

27. In the event that KDHE shall send Coleman a Notice of Disapproval, Coleman shall amend and submit to KDHE revised reports to correct the deficiencies in the reports in accordance with KDHE's recommendations. Such revised report shall be provided within thirty (30) days after receipt of such Notice of Disapproval.

28. If KDHE or Coleman determines that additional work beyond the Work Plan is necessary, written notice of such additional work shall be provided by KDHE or Coleman. Upon written approval by KDHE, such additional work shall be implemented by Coleman in accordance with the procedures set forth in Paragraph 29.

29. Additional work described in Paragraph 29 or modified work as described in Paragraph 27, shall be incorporated in this Consent Order and shall be implemented by Coleman as a requirement of this Consent Order in accordance with the following procedures:

a. Unless otherwise notified in writing by KDHE, Coleman shall submit a work plan, which shall include a schedule for implementation of the additional work, to KDHE within thirty (30) days (or such other period as shall have been agreed upon) of

receipt of the KDHE approval referred to in Paragraph 28.

b. KDHE shall approve or disapprove the work plan, consistent with the requirements of this Consent Order.

c. If KDHE disapproves the work plan, Coleman shall submit to KDHE a revised work plan pursuant to the provisions of Paragraph 27.

d. Upon approval by KDHE, any new or revised work plan for additional or modified work shall be incorporated by reference into this Consent Order and shall be implemented by Coleman.

30. Any additional work beyond the Work Plan may not be incorporated into this Consent Order except in accordance with Paragraph 29; provided however that nothing herein shall be construed to relieve Coleman of their obligations to meet and maintain compliance with the requirements of this Consent Order, nor impair the rights of KDHE to require additional work in a subsequent judicial or administrative action.

31. All work performed pursuant to this Consent Order shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site investigations and remediation. Within 30 days of the effective date of this Consent Order, Coleman shall notify KDHE in writing of the name, title, and qualification of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Consent Order.

QUALITY ASSURANCE

32. All samples analyzed pursuant to this Consent Order shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the document entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" and USEPA Contract Laboratory Program Statement of Work for Metals Analysis" (1988) ("Contract Lab Statement of Work") and is approved by KDHE.

33. All sample collection and analysis shall be performed in compliance with EPA-approved methods, including timing of analyses, documentation of sample collection, handling and analysis, as described in the following documents:

- a. "NEIC Manual for Ground Water/Subsurface Investigations at Hazardous Waste Sites," Document No. EPA/330/9-81-002; and
- b. Contract Lab Statement of Work.

34. Laboratory deliverables as specified in the Contract Lab Statement of Work shall be submitted to KDHE for all analytical work performed pursuant to this Consent Order. Any deviations from the procedures and methods set forth in these documents must be approved in writing by KDHE prior to use.

35. Coleman shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan, which is part of the Work Plan, for all sample collection and analysis performed pursuant to this Consent Order.

36. All contracts for field work and laboratory analysis

shall provide that KDHE representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon reasonable request, to all laboratories and personnel utilized by Coleman for sample collection and analysis and other field work. Upon request by KDHE, the laboratories shall perform analysis of a reasonable number of known samples provided by KDHE to demonstrate the quality of the analytical data.

REPORTING

37. Coleman shall provide KDHE with written progress reports quarterly, pursuant to the effective date of this Consent Order. At a minimum, these progress reports shall: (1) describe the actions, progress, and status of projects which have been taken toward achieving compliance with this Consent Order, as well as the actions which are scheduled for the next quarter; (2) identify any requirements under this Consent Order that were not completed as provided and any problem areas and anticipated problem areas in complying with this Consent Order; and (3) include all results of sampling, tests, data, and conclusions drawn from data generated pursuant to the Work Plan(s).

ACCESS

38. KDHE and any of its agents or contractors is authorized by Coleman to enter and freely move about all property at the site

for the purposes of, inter alia; interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the activities set out in the Work Plan; reviewing the progress of Coleman in carrying out the terms of this Consent Order; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Coleman. Coleman shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Order.

39. To the extent that work required by the Work Plan must be done on property not owned or controlled by Coleman, Coleman shall use its best efforts to obtain site access agreements from the present owner(s) of such property within thirty (30) days of the effective date of this Consent Order. Best efforts includes, but is not limited to, reasonable payment of monies to the property owner. In the event that agreements for site access are not obtained within thirty (30) days of the effective date of this Consent Order, Coleman shall notify KDHE regarding both the lack of and its failure to obtain such agreements within seven (7) days thereafter. In the event that KDHE obtains access for Coleman, all costs incurred by KDHE shall be reimbursed by Coleman. Upon KDHE's obtaining access for Coleman, Coleman shall undertake approved work on such property. KDHE shall not be responsible for any injury or damage to persons or property caused by the negligent or willful

acts or omissions of Coleman, its officers, employees, agents, successors, assigns, contractors, or any other person acting on Coleman's behalf in carrying out any activities pursuant to the terms of this Consent Order.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

40. Coleman shall make available to KDHE all results of sampling, tests, or other data generated by or on its behalf with respect to the implementation of this Consent Order. Coleman shall submit these results in the progress reports described in the "Reporting" Section of this Consent Order. KDHE will make sampling results and other data available to Coleman.

41. Coleman shall notify KDHE at least seven (7) days before conducting any well drilling, installation of equipment, or sampling. At the request of KDHE, Coleman shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Coleman pursuant to this Consent Order. Similarly, at the request of Coleman KDHE shall allow Coleman or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Consent Order. KDHE shall notify Coleman at least seven (7) days before conducting any sampling under this Consent Order, provided, however, that if 7 days notice of sample collection activity is not possible, KDHE and Coleman shall give such advance notice to enable each party to have a representative present during said sample collection activity.

RECORD PRESERVATION

42. Coleman agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all non-privileged records and documents which have not previously been provided to KDHE in its possession or in the possession of divisions, employees, agents or consultants or contractors which relate in any way to this Consent Order. At the conclusion of six (6) years, Coleman shall then make such records available to KDHE for inspection or KDHE's retention or shall provide copies of any such records to KDHE.

STIPULATED PENALTIES

43. For each period of time that Coleman fail to submit reports or deliverables at the times set out in Exhibit 2 which is part of this Consent Order, Coleman shall pay as stipulated penalties the following: \$2,000 for the first week of delay or part thereof; \$5,000 for the second week of delay for the 8th through 14th day and \$1,000 per day of delay thereafter. Any accrued penalties shall be forgiven in the event the next deliverable on the schedule in attachment 1 is completed by the originally scheduled completion date.

44. Any stipulated penalties shall be payable within twenty-one (21) days after Coleman's receipt of demand by KDHE and shall be paid by certified check to:

Secretary of Health and Environment
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

A copy of the check and a transmittal letter shall be sent to the KDHE contact specified herein. Coleman shall remit a check for the full amount of penalty stated in the demand.

45. Should Coleman fail to comply with a time requirement of any tasks required by this Consent Order, the period of noncompliance shall terminate upon Coleman's performance of said requirement.

FORCE MAJEURE

46. The parties hereto recognize and acknowledge that acts of God or other matters of impossibility may prevent Coleman from accomplishing the commitments described in Attachment 2, and agree that, if such acts of God, or impossibility arise, Coleman shall promptly notify KDHE in writing of such matter and the KDHE shall determine the extent to which modifications to this Order are necessary and appropriate and Coleman shall retain the right to appeal any such determination.

OTHER CLAIMS AND PARTIES

47. Nothing in this Consent Order shall constitute or be construed as a release for any claim, cause of action or demand in

law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility.

DISPUTE RESOLUTION

48. If Coleman disagrees, in whole or in part, with any decision by KDHE pursuant to this Consent Order, Coleman shall notify KDHE within thirty (30) days of receipt of the decision. Parties shall then have an additional thirty (30) working days to attempt to resolve the dispute. If an agreement is reached, the resolution shall be reduced to writing, signed by each Party and incorporated thereupon into this Consent Order. If agreement is not reached, the KDHE shall issue its final written decision on the dispute to Coleman.

49. Coleman reserves its rights to appeal any decision of the KDHE, which is not consistent with law or which is arbitrary or capricious concerning a dispute under this Consent Order, to an administrative body with applicable jurisdiction and thereafter in compliance with the Kansas Administrative Procedures Act. The final decision or resolution of the applicable authority or court shall be incorporated as a part of this Consent Order. For purposes of this Consent Order, final order or decision shall mean

an order or decision from which no appeal may be taken.

PUBLIC RELATIONS

50. Coleman and KDHE shall develop a "Public Information Program" to keep the public informed about actions taken and to allow participation in the process by interested members of the public. Coleman and KDHE shall provide each other a copy of any public releases regarding the site prior to release.

RESERVATION OF RIGHTS

51. Subject to the provisions of this Consent Order, KDHE and Coleman reserve all rights and defenses which they may have, including the right to seek judicial review to the extent that such rights are provided by law. In any action by KDHE to enforce the terms or conditions of the Consent Order, subject to the provisions of this Consent Order, Coleman reserves all rights to raise all defenses and challenges, both factual and legal.

OTHER APPLICABLE LAWS

52. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the substantive requirements of all applicable local, state, and federal laws and regulations.

PROJECT COORDINATORS

53. On or before the effective date of this Consent Order, KDHE and Coleman shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The KDHE Project Coordinator will be KDHE's designated representative. To the maximum extent possible, all communications between Colemans and KDHE and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinator. The parties agree to provide at least seven (7) days written notice prior to changing Project Coordinators. The absence of the KDHE Project Coordinator from the Site shall not be cause for the stoppage of work.

NOTIFICATION

54. Unless otherwise specified, reports, notice or other submissions required under this Consent Order shall be in writing and shall be sent to:

- a. For KDHE
Rick Bean, Environmental Geologist
Kansas Department of Health and Environment
Forbes Field, Bldg. 740
Topeka, Kansas 66620
- b. For Coleman:
Darrell Neugebauer
Coleman Outdoor Products, Inc.
3600 North Hydraulic
P.O. Box 2931 67201
Wichita, Kansas 67219

Lorelei Joy Borland
Special Counsel for Environmental Affairs
The Coleman Company, Inc.
625 Madison Avenue
New York, New York 10022

REIMBURSEMENT OF COSTS

55. Six months after the effective date of this Consent Order and semiannually thereafter, KDHE shall submit to Coleman an accounting of all oversight costs incurred by KDHE with respect to this Consent Order including the cost of preparation and maintenance of the Administrative Record. At the conclusion of the first two years, the amount of KDHE's oversight shall be re-negotiated.

56. Coleman shall, within thirty (30) calendar days from receipt of said accounting, remit a check for the amount of those costs made payable to the Secretary of Health and Environment. Checks should specifically reference the identity of this site, and should be addressed to:

Secretary of Health and Environment
Landon Building - Ninth and Jackson
Suite 904
Topeka, Kansas 66612

A copy of the check and transmittal letter shall be sent to the KDHE contact specified herein. Coleman shall remit a check for the full amount of those costs.

CONTRIBUTION PROTECTION

57. a. KDHE acknowledges that under 42 U.S.C. 9613(f)(2), by

entry of this Agreement, Coleman is not liable for claims for contribution regarding matters addressed herein, and that this Agreement does not discharge any other potentially responsible parties.

b. KDHE acknowledges that Coleman has a right of contribution under federal law and may have such rights under state law, against other potentially responsible parties who may have created, contributed to, or otherwise have become responsible for the matters described herein, in that Coleman has expended or will expend reasonable response costs in performance of the activities required under this Agreement, and KDHE agrees to provide reasonable assistance upon request to Coleman to assist them with enforcement of their claims against such third parties. The assistance referred to herein shall include making available records which relate to this matter, providing statements or testimony of staff upon notification when such requirements are relevant to the proceedings, or such other assistance as is reasonable and appropriate.

EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

58. This Consent Order shall become effective when signed by the Secretary of the Department of Health and Environment.

59. This Consent Order may be amended by mutual agreement of KDHE and Coleman. Such amendments shall be in writing, shall have as their effective date the date on which they are signed by both

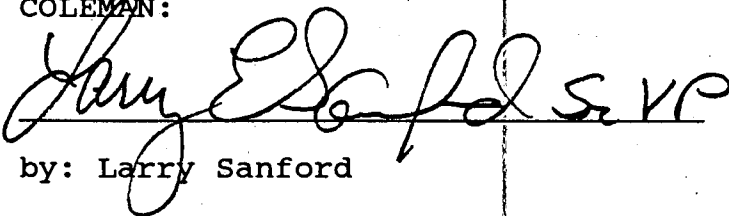
parties, and shall be incorporated into this Consent Order. Nothing herein shall limit KDHE's ability to require additional tasks as set forth in Paragraph 34 herein.

TERMINATION

60. The provisions of this Consent Order shall terminate upon Coleman's receipt of written notice from KDHE that Coleman has demonstrated that the terms of this Consent Order, including any additional tasks which KDHE has determined to be necessary have been satisfactorily completed.

IN WITNESS WHEREOF, the parties have affixed their signatures below:


COLEMAN:


by: Larry Sanford

Date:

5 Nov 92

STATE OF KANSAS:


Robert C. Harder, Secretary
Kansas Department of Health &
Environment

Date:

11/17/92

CERTIFICATE OF MAILING

I hereby certify that on this 17th day of November, 1992, I deposited a true and correct copy of the above and foregoing Consent Order in the United States Mail, postage prepaid, and addressed to:

Lorelei Borland
The Coleman Company, Inc.
625 Madison Avenue
New York, New York 10022

Alice L. Wenning
Staff Person

State of Kansas
Joan Finney, Governor



*Coleman
NEast*

Department of Health and Environment
Azzie Young, Ph.D., Secretary

Reply to: Office of Legal Services
Suite 904
Phone: (913) 296-1330
(913) 296-0088
Fax: (913) 296-7119

September 28, 1992

Lorelei Joy Borland
Vice President
Special Counsel of Environmental Affairs
MacAndrews & Forbes Holdings, Inc.
625 Madison Avenue
New York, New York 10022

Re: Coleman Northeast Plant
Case No. 91-E-205

Dear Lorelei:

Enclosed is an original consent order in regards to the above matter. I have included your name and address in paragraph 54 as requested.

If this order meets your approval, please sign and return it to the address below. After obtaining Secretary Young's signature, we will mail a copy to your office.

Sincerely,

L. Patricia Casey

L. Patricia Casey
Attorney

LPC:alh

Enclosure

cc: Rick Bean

RECEIVED

SEP 29 1992

BUREAU OF
ENVIRONMENTAL
REMEDIATION